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6 *Attorneys for Defendants, DGL Group, Ltd.*
7 *and Amazon.Com Services, LLC*

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF NEVADA**

10 JASON HART,

11 Plaintiff,

12 vs.

13 DGL GROUP, LTD, AMAZON.COM Services,
14 LLC, ROE CORPORATIONS I through X,
inclusive

15 Defendant.

CASE NO.

[formerly Eighth Judicial District
Court Clark County, Nevada
Case No. A-22-855716-C]

**PETITION FOR AND NOTICE OF
REMOVAL**

16 **NOW COMES** Defendant, DGL Group, Ltd, by its attorneys, Thorndal Armstrong Delk
17 Balkenbush & Eisinger and McCoy Leavitt Laskey LLC, pursuant to 28 U.S.C. §§ 1332(a),
18 1441(a-b), and 1446, and hereby give notice of removal of the above-captioned action from the
19 Eighth Judicial District Court of Clark County Nevada to the United States District Court for the
20 District of Nevada. In support of removal, Defendant alleges and shows to the Court as follows:

21 **I. STATEMENT OF THE CASE**

22 1. This matter was commenced by Complaint filed July 20, 2022 in the Eighth Judicial
23 District Court, Clark County Nevada, captioned *Jason Hart v. DGL Group, Amazon.com Services*
24 *LLC and ROE Corporations I through X, inclusive*, Case No. A-22-855716-C.

25 2. A true and correct copy of the above-referenced Complaint is attached hereto as
26 Exhibit "A".

27 3. This is a civil action in which the Plaintiff was allegedly injured while utilizing a
28 hoverboard.

1 4. Plaintiff alleges that his personal injuries are the result of a defective hoverboard
2 and asserts the following claims: (1) strict products liability; (2) negligence: defective products;
3 and (3) breach of implied warranty of merchantability.

4 5. The Plaintiff seeks damages in the amount of \$250,000.00, plus costs. See Exhibit
5 “B”.

6 **II. REMOVAL IS TIMELY**

7 6. Pursuant to 28 U.S.C. § 1446(b), “[t]he notice of removal of a civil action or
8 proceeding shall be filed within 30 days after the receipt by the defendant, through service or
9 otherwise of a copy of the initial pleading setting forth the claim for relief upon which such action
10 or proceeding is based, or within 30 days after the service of summons upon the defendant if such
11 initial pleading has then been filed in court and is not required to be served on the defendant,
12 whichever period is shorter.”

13 7. Defendant DGL Group, LTD. accepted service at its Edison, New Jersey
14 headquarters on August 17, 2022.

15 8. Removal is therefore timely in accordance with 28 U.S.C. § 1446(b).

16 **III. CONSENT TO REMOVAL**

17 9. This Notice of Removal is proper under 28 U.S.C. § 1446.

18 10. 28 U.S.C. § 1446(b)(2)(A) states, “When a civil action is removed solely under
19 section 1441(a), all defendants who have been properly joined and served must join in or consent
20 to the removal of the action.”

21 11. This is commonly referred to as the “rule of unanimity.”

22 12. However, “[a]n exception to the rule of unanimity applies where less than all
23 defendants have been served at the time of removal. In such a case, for removal to be proper, it is
24 held that only the defendants served at the time of removal need join, or consent to, the notice of
25 removal.” *Wolfe v Green*, 660 F. Supp. 2d 738 (S.D. W.Va. 2009).

26 13. Further, “[a] Notice of Removal filed by less than all defendants ‘is considered
27 defective if it does not contain an explanation for the non-joinder of those defendants.’” *Klein v.*
28

1 *Manor Helathcare Corp.*, 19 F.3d 1433 n. 8 (6th Circ. 1994) (*quoting Hicks v Emery Worldwide,*
2 *Inc.*, 254 F. Supp. 2d 968, 972-73 (S.D. Ohio 2003)).

3 14. As of the date of this Notice of Removal, the above-named Defendant ROE
4 Corporations I through X, inclusive, has not been served and therefore cannot consent to this
5 Notice of Removal.

6 15. Proof of service was issued to defendant, Amazon.com Services LLC on August 3,
7 2022.

8 16. Counsel for Defendant, Amazon.com Services LLC, attorneys Alletta Brenner and
9 Alexander Najarian along with the law offices of Thorndal Armstrong Delk Balkenbush &
10 Eisinger and McCoy Leavitt Laskey LLC, through attorney Kevin Diamond, consented to this
11 removal by telephone conference on September 6, 2022.

12 17. Based on 28 U.S.C. §1446(b)(2)(A), and relevant case law, this Notice of Removal
13 is valid.

14 **IV. BASIS FOR REMOVAL – ORIGINAL JURISDICTION**

15 **a. COMPLETE DIVERSITY**

16 18. The United States District Court has original jurisdiction over this litigation filed
17 in state court pursuant to 28 U.S.C. §§ 1332(a)(1) and 1441 because diversity of parties exists.

18 19. 28 U.S.C. § 1332(a)(1) states “The district courts *shall* have original jurisdiction of
19 all civil actions where the matter in controversy . . . is between citizens of different states”
20 (emphasis added).

21 20. “[A] corporation shall be deemed to be a citizen of every State and foreign state by
22 which it has been incorporated and of the State or foreign state where it has its principal place of
23 business” See U.S.C. § 1332(c)(1).

24 21. DGL Group, LTD. is a New York Corporation with its principal place of business
25 in Edison, New Jersey. Therefore, DGL Group, LTD is a citizen of New Jersey.

26 22. Amazon.com Services LLC is a Delaware Corporation with its principal place of
27 business in Seattle, Washington. Furthermore, the sole member of Amazon.com Services LLC is
28

1 Amazon.com Sales, Inc., which is a Delaware Corporation with its principal place of business in
2 Washington. Therefore, Amazon.com Services LLC is a citizen of Delaware.

3 23. Upon information and belief plaintiff, Jason Hart, is an adult resident residing in
4 Las Vegas, Nevada. *See* Complaint ¶ 1

5 24. 28 U.S.C. §1442(b)(1) states, “[i]n determining whether a civil action is removable
6 on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued
7 under fictitious names shall be disregarded.

8 25. Because DGL Group, LTD and Amazon.com Services LLC are not citizens of the
9 same state, and neither is a citizen of the same state with plaintiff, there is complete diversity
10 between plaintiff and defendants.

11 **b. AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00**

12 26. Federal courts “have original jurisdiction of all civil actions where the matter in
13 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs” *See* 28
14 U.S.C. § 1332(a).

15 27. Plaintiff claims that, as a result of the subject incident on or about July 25, 2020 he
16 sustained “a right ankle fracture of the distal fibula, which necessitated emergency open reduction
17 and internal fixation surgery ... including a steel plate containing screws to secure the bone.” *See*
18 Complaint ¶ 21.

19 28. Plaintiff’s Complaint further alleges that he sustained “[o]ther injuries include[ing]
20 abrasions, difficulty walking, swelling, bruising, sharp shooting pains, burning sensations, and
21 hardware pins.” *See* Complaint ¶ 22.

22 29. As a result of plaintiff’s alleged injury, he alleges he “continues to suffer from pain
23 in his right foot, muscle spasms, dull aches and pains, sharp shooting pains, and he has a limited
24 range of motion.” *See* Complaint ¶ 23.

25 30. Plaintiff’s Complaint alleges he “incurred medical, hospital, and other related
26 expenses ... including loss of wage, both past, present, and future ... and that he sustained
27 “emotional distress, pain and suffering” as a result of his injury. *See* Complaint ¶¶ 86-88. *See also*
28 Exhibit C - Plaintiff’s Itemization of Medical Expenses.

1 31. Plaintiff demanded \$250,000 for his alleged medical special damages, wage loss,
2 emotional distress, and future medical special damages. *See* Exhibit B.

3 32. Therefore, pursuant to 28 U.S.C. 1332(a) and 1332(a)(1) this Honorable Court has
4 jurisdiction over this action because it is a civil action under which complete diversity of
5 citizenship exists between plaintiff and defendants and more than \$75,000 is at stake

6 **V. VENUE**

7 33. 28 U.S.C. § 1441(a) reads, “Except as otherwise expressly provided by Act of
8 Congress, any civil action brought in a state court of which the district courts of the United States
9 have original jurisdiction, may be removed by the defendant or the defendants, to the district court
10 of the United States for the district and division embracing the place where such action is pending.”

11 34. Since this Honorable Court has original jurisdiction over this matter, and the Eighth
12 Judicial District Court of Clark County Nevada sits in this Honorable Court’s jurisdiction, venue
13 in the United States District Court for the District of Nevada is appropriate under 28 U.S.C. §
14 1441(a).

15 **VI. FULL COMPLIANCE**

16 35. Pursuant to 28 U.S.C. § 1446(d), defendant, DGL Group, LTD, is filing this Notice
17 of Removal with the clerk for the state court in which the State Court Action was originally filed.
18 Copies of the Notice to the Eighth Judicial District Court of Clark County Nevada, together with
19 this Notice of Removal with exhibits, are being served upon all parties through their attorneys of
20 record pursuant to 28 U.S.C. § 1446(d).

21 36. Copies of all pleadings, process, and order in the state court lawsuit are attached
22 hereto as Exhibit C.

23 ///

24 ///

25 ///

26 ///

27 ///

28

Page 6 of 7

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of September 2022, service of the above and foregoing **PETITION FOR AND NOTICE OF REMOVAL** was made upon each of the parties via electronic service through the through the United States District Court E-File and Serve system and U.S. Mail and E-Mail.

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**THORNDAL
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EXHIBIT A

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CASE NO: A-22-855716-C
Department 4

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18 *Attorneys for Plaintiffs*

19
20 **EIGHTH JUDICIAL DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

22 JASON HART,
23 Plaintiff,
24 vs.

25 DGL GROUP LTD., a New Jersey
Corporation; AMAZON.COM SERVICES
26 LLC, a Delaware Corporation; and ROE
CORPORATIONS I through X, inclusive,
27 Defendants.
28

CASE NO.:
DEPT. NO.:

COMPLAINT FOR STRICT PRODUCTS
LIABILITY, NEGLIGENCE, AND
BREACH OF WARRANTY

JURY TRIAL DEMANDED

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**COMPLAINT FOR STRICT PRODUCTS LIABILITY, NEGLIGENCE, AND
BREACH OF WARRANTY**

Plaintiff, JASON HART (“Mr. Hart”), by and through his attorneys of record, GERALD I. GILLOCK & ASSOCIATES; TIMOTHY O’REILLY, CHTD.; and SAM & ASH, LLP, allege and complain as follows:

PARTIES AND JURISDICTION

1. On July 25, 2020, in Clark County, Nevada, Mr. Hart suffered serious bodily injury due to a defect in a product that upon information and belief was (i) distributed by DGL GROUP LTD. (“DGL”) and (ii) distributed and sold by AMAZON.COM SERVICES LLC (“Amazon”). Over the period encompassed by this action, Mr. Hart resided in Clark County, Nevada, and remains a resident of the same county.

2. Upon information and belief, over the period encompassed by this action, Defendant DGL, a New Jersey corporation, engaged in the distribution and sale of a product known as a “hoverboard.”

3. Upon information and belief, DGL distributed its hoverboards—which were manufactured in the People’s Republic of China—throughout the United States, including via Amazon, who both distributed and sold DGL’s product.

4. Amazon is a foreign corporation that over the period encompassed by this action was, and remains, authorized to conduct business in the State of Nevada.

5. Upon information and belief, for the acts complained of over the period encompassed by this action fictitious Defendants ROES I through X (“Roe Defendants”) are liable for injury incurred by Mr. Hart because of a manufacturing defect inherent in the hoverboard purchased by Mr. Hart from Amazon on July 17, 2020.

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1 6. Over the period encompassed by this action, fictitious Defendants Roe Defendants
2 were corporations, firms, and the like, who were engaged in the business of distributing and selling
3 the defective hoverboard that injured Mr. Hart. The latter is currently unaware of the true names,
4 identities, or capacities, whether individual, corporate, associate, or otherwise of Roe Defendants and
5 is unaware whether any of those entities still conduct business; thus, Plaintiffs sue Roe Defendants
6 by fictitious names.
7

8 7. Mr. Hart is informed and believes and therefore alleges that each Roe Defendant is
9 responsible legally to some degree, both jointly and severally as to strict products liability, for the
10 injury and damage caused by the defective hoverboard. When the identities and capacities of the
11 above become known to Mr. Hart, he will move to amend the Complaint to identify the unnamed Roe
12 Defendants and add specific allegations and claims relevant to each individually accused.
13

14 8. Venue is proper in the Eighth Judicial District Court, which exercises jurisdiction over
15 the parties and the causes of action.
16

17 9. By introducing the hoverboard into the stream of commerce and by supplying them to
18 Amazon and directly to the public, DGL has purposefully availed itself of the privilege of selling its
19 products, specifically its hoverboards, within the State of Nevada; thus, the Nevada courts can
20 exercise jurisdiction over DGL.
21

22 10. Likewise, Amazon, a foreign corporation registered in Nevada and which sells
23 extensively across the entire United States, has distributed, sold, or otherwise placed its products,
24 namely the hoverboard, into the stream of commerce; thus, the Nevada courts can exercise
25 jurisdiction over Amazon.
26

27 11. Amazon's forum selection clause, waiver of right to trial by jury, and requirement to
28 resolve disputes via arbitration are unlawful under general principles of contract law and public

1 policy, as are any clauses that limit liability for personal injury caused by a product that Amazon has
2 sold.

3 **GENERAL ALLEGATIONS**

4 12. On July 17, 2020, Mr. Hart's wife used her own debit card connected to a joint account
5 that she shares with her husband placed an order with Amazon for a new "Hover-1 H1 Hoverboard
6 Electric Scooter." The order was shipped on July 21, 2020, and arrived at the Hart household shortly
7 after.
8

9 13. On July 25, 2020, between the hours of 4:00 p.m. and 5:00 p.m Mr. Hart rode the
10 hoverboard approximately 100 yards from his house, up his street, to where the mailboxes are located
11 communally.
12

13 14. A hoverboard is a motorized personal vehicle consisting of a platform for the feet
14 mounted on two wheels and controlled by the way the rider distributes their weight.

15 15. On the date of the accident, visibility was unlimited. The temperature was 104f, which
16 is within the manufacturer's recommended operating range.
17

18 16. The street down which Mr. Hart traveled was paved. No other vehicular traffic was
19 present and the environment could be described as quiet.

20 17. Without incident, Mr. Hart pulled up in front of the mailboxes, slowed down, and
21 came to a stop.
22

23 18. On flat ground and in accord with the instructions in the user manual, Mr. Hart lifted
24 his left foot off the hoverboard and placed it on the ground.

25 19. While still bearing weight on his right foot, which remained on the hoverboard, the
26 hoverboard without warning rotated violently clockwise.
27

28 ///

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1 20. Mr. Hart's right foot remained stationary on the hoverboard but rotated through
2 approximately ninety degrees, which caused him to fall and land on his elbows and arms.

3 21. Mr. Hart suffered an ankle fracture. Specifically, his injuries included a right ankle
4 fracture of the distal fibula, which necessitated emergency open reduction and internal fixation
5 surgery. Surgeons inserted a steel plate containing screws to secure the bone.
6

7 22. Other injuries included abrasions, difficulty walking, swelling, bruising, sharp
8 shooting pains, burning sensations, and hardware pains.

9 23. In addition to the injuries and symptoms described above, Mr. Hart continues to suffer
10 from pain in his right foot, muscle spasms, dull aches and pains, sharp shooting pains, and he has a
11 limited range of motion.
12

13 24. Mr. Hart now cannot walk long distances. He moved his family to Nevada from St.
14 Louis some three years ago—one of the reasons for the move was so that his family could have more
15 of an outdoor-type lifestyle, and they wished to take advantage of the regional and of Nevada's
16 numerous opportunities for outdoor adventures.
17

18 25. Mr. Hart's daughter especially enjoys outdoor activities, a major reason for the move
19 and change in lifestyle, but due to the injury sustained from the accident, Mr. Hart now struggled with
20 any hiking trips.

21 26. Mr. Hart has purchased two identical hoverboards. He has read the manuals twice and
22 also practiced on the hoverboard within his house so that he could familiarize himself with, and
23 become comfortable using in a safe manner, the hoverboard.
24

25 27. Mr. Hart was proficient in the safe use of the hoverboard; he possesses a video of
26 himself practicing on the hoverboard.

27 28. Mr. Hart followed the instructions within the user manual.
28

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1 29. At the time of the incident, Hart wore closed-toe sneakers, which ensured a good and
2 stable grip on the device. No recommended safety equipment advised in the user manual, namely a
3 helmet and elbow and knee pads, would have prevented or mitigated the harm that Mr. Hart suffered.

4 30. Mr. Hart was not under the influence of any drugs or alcohol at the time he suffered
5 injury.

6 31. The hoverboard was never dropped or damaged in any way. In fact, it malfunctioned
7 only days after purchase.

8 32. Mr. Hart has no prior head, back, or neck ailments, and he has had no surgery on those
9 areas. The only surgery he has had was a deviated septum repair years before the incident.

10 33. Before riding, Mr. Hart thoroughly inspected the hoverboard before riding. He
11 checked that the wheels were clean, unobstructed, and free, and he also checked the battery level,
12 which was fully charged.

13 34. Mr. Hart never observed any red-light indicator blinking or otherwise, which would
14 have indicated a fault on the hoverboard.

15 35. Mr. Hart had no warning at all of any fault.

16 36. At no point did Mr. Hart jump off the hoverboard, which the user manual prohibits.

17 37. Mr. Hart followed all instructions contained within the safety manual regarding
18 disembarkation—an action which he had conducted numerous times before without incident—
19 namely removing his left foot first (backwards) then right foot, but before Mr. Hart had the chance to
20 remove his right foot, the hoverboard malfunctioned due to a manufacturing defect.

21 38. The hoverboard was not unbalanced or uncalibrated. Every other time Hart rode the
22 recently purchased item, it functioned fine, just as advertised and as an ordinary user of the product
23 would expect.

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1 39. Counsel for Mr. Hart placed DGL on notice of the breach of warranty.

2 **FIRST CAUSE OF ACTION**

3 **STRICT PRODUCTS LIABILITY: MANUFACTURING DEFECT**
4 **(AGAINST ALL DEFENDANTS)**

5 40. Mr. Hart adopts and incorporates by reference each allegation contained in the
6 preceding paragraphs of the Complaint as though set forth fully below.

7 41. Each defendant is strictly liable for the manufacturing defect inherent in the
8 hoverboard.
9

10 42. As commercial suppliers who deal routinely in hoverboards, each defendant engaged
11 in the business of selling the hoverboard.

12 43. Also, upon reasonable cause and belief, Amazon marketed, promoted, and collected
13 paymnt for the hoverboard, which DGL distributed and/or sold to Amazon for sale to the general
14 public.
15

16 44. The receipt for order #111-1548091-6031453, placed on July 17, 2020 to Amazon and
17 shipped to Mr. Hart's wife on July 21, 2020 at the marital address, states clearly: "Sold by:
18 Amazon.com Services LLC," and states, "Condition: New."
19

20 45. Each defendant placed upon the market and into the chain of commerce a defective
21 product.

22 46. A defect in the hoverboard, which caused the product to be unreasonably dangerous,
23 caused Mr. Hart's injuries, which would not have occurred absent such a defect.

24 47. The hoverboard was the actual and proximate cause of Mr. Hart's injuries. The defect
25 existed when the hoverboard left the control of Defendants, and upon information and belief, the
26 hoverboard was not substantially altered between leaving the custody of Defendants and delivery to
27 Mr. Hart's household.
28

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1 48. The hoverboard was defective because it failed to perform in the manner reasonably
2 expected in light of its nature and intended function and was more dangerous than would be
3 contemplated by an ordinary user having the ordinary knowledge available in the community; Mr.
4 Hart trained himself in the safe use of the hoverboard and followed the instructions in the user manual
5 for safe disembarkation.

6 49. An ordinary and reasonable user would not expect a product of this nature to
7 malfunction and cause such injury only days after delivery. Mr. Hart's injuries speak for themselves;
8 the hoverboard failed to perform in the manner reasonably expected in light of its nature and intended
9 function. Mr. Hart used the hoverboard in an entirely foreseeable manner.

10 50. Whilst it is necessary for Mr. Hart to show that a product was defective and that the
11 defect caused the injury, Nevada law does not require Mr. Hart is to show that a *specific* defect caused
12 the injury or to present expert testimony of a manufacturing defect. Mr. Hart presents proof of an
13 unexpected and dangerous malfunction, which the law accepts might properly be accepted by a jury
14 as sufficient circumstantial proof of a defect or an unreasonably dangerous condition without direct
15 proof of the mechanical cause of the hoverboard's malfunction: no direct proof of defect is required.

16 51. Defendants' conducted their acts and omissions with such wanton and reckless
17 disregard for the well-being of Mr. Hart, and indeed any of the hoverboard's users, so as to constitute
18 malice, gross negligence, and oppression; thus, Mr. Hart is entitled to punitive and exemplary
19 damages in excess of the statutory cap imposed by NRS 42.005(1). NRS 42.005(1)(b) states that the
20 normal punitive damage limits are not applicable to a distributor or seller of a defective product.

21 52. As a proximate result of the negligence of Defendants, Mr. Hart has incurred medical,
22 hospital, and other related expenses; the full extent of these expenses are not currently known, and
23 Mr. Hart shall move for leave to amend the Complaint to conform to proof at the time of trial. Mr.
24

1 Hart has suffered both general and special damages in an amount in excess of \$15,000.

2 53. As a direct and proximate result of Defendants' conduct, Mr. Hart has suffered special
3 damages, which includes loss of wages, both past, present, and future, in an amount exceeding
4 \$15,000.

5 54. As a further proximate result of Defendants' negligence, Mr. Hart has suffered general
6 damages including, but not limited to, emotional distress, pain, and suffering as a result of his injuries
7 in an amount that exceeds \$15,000.

8 55. As a further proximate result of Defendants' negligent acts and omissions, Mr. Hart
9 was forced to retain the services of counsel in this action and thus seek reimbursement for an
10 attorney's fee and costs.
11

12
13 **SECOND CAUSE OF ACTION**

14 **NEGLIGENCE: DEFECTIVE PRODUCTS**
15 **(AGAINST ALL DEFENDANTS)**

16 56. Mr. Hart adopts and incorporates by reference each allegation contained in the
17 preceding paragraphs of the Complaint as though set forth fully below.

18 57. As commercial suppliers that placed hoverboards into the stream of commerce,
19 Defendants owed a duty of care to all foreseeable users of the hoverboard to ensure that the
20 hoverboard would function as expected and not cause dangerous injury towards a foreseeable user.

21 58. Defendants breached their duty of care to Mr. Hart, a purchaser and foreseeable user
22 of the hoverboard, in that the former's negligence led to the supply of a defective product as outlined
23 in the preceding paragraphs.
24

25 59. A retailer and a wholesaler satisfies the duty of care by a cursory inspection of the
26 product.
27

28 60. Upon information and belief, as bulk distributors of the hoverboard, a popular product,

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1 Defendants failed to conduct a cursory inspection of the hoverboard to check for defects.

2 61. A res ipsa inference of negligence is permitted because Mr. Hart demonstrates that
3 Defendants were in exclusive control of the hoverboard, the accident was one that does not ordinarily
4 occur in the absence of negligence, and Defendants are in a better position to explain the cause of the
5 accident and the hoverboard's malfunction and defect.

6
7 62. It is more probable than not that Mr. Hart's injuries resulted from Defendants' breach
8 of the duty of care, thus an inference of negligence on the part of Defendants arises.

9 63. As outlined in Count I, Mr. Hart demonstrates actual and proximate cause; he suffered
10 serious injury whilst using the hoverboard in the manner instructed by the user manual, and the injury
11 was the natural and probable consequence of Defendants' negligence, i.e., failure to conduct a cursory
12 examination of the hoverboard, which Defendants ought to have foreseen in light of the attending
13 circumstances.

14
15 64. Defendants' conducted their acts and omissions with such wanton and reckless
16 disregard for the well-being of Mr. Hart, and indeed any of the hoverboard's users, so as to constitute
17 malice, gross negligence, and oppression; thus, Mr. Hart is entitled to punitive and exemplary
18 damages in excess of the statutory cap imposed by NRS 42.005(1). NRS 42.005(1)(b) exempts a
19 distributor or seller of a defective product from the caps imposed by NRS 42.005(1).
20

21 65. As a proximate result of the negligence of Defendants, Mr. Hart has incurred medical,
22 hospital, and other related expenses; the full extent of these expenses are not currently known, and
23 Mr. Hart shall move for leave to amend the Complaint to conform to proof at the time of trial. Mr.
24 Hart has suffered both general and special damages in an amount in excess of \$15,000.
25

26 66. As a direct and proximate result of Defendants' conduct, Mr. Hart has suffered special
27 damages, which includes loss of wages, both past, present, and future, in an amount exceeding
28

1 \$15,000.

2 67. As a further proximate result of Defendants' negligence, Mr. Hart has suffered general
3 damages including, but not limited to, emotional distress, pain, and suffering as a result of his injuries
4 in an amount that exceeds \$15,000.

5 68. As a further proximate result of Defendants' negligent acts and omissions, Mr. Hart
6 was forced to retain the services of counsel in this action and thus seek reimbursement for an
7 attorney's fee and costs.
8

9 **THIRD CAUSE OF ACTION**

10 **NRS 104.2314: BREACH OF WARRANTY—IMPLIED WARRANTY OF**
11 **MERCHANTABILITY**
12 **(AGAINST ALL DEFENDANTS)**

13 69. Mr. Hart adopts and incorporates by reference each allegation contained in the
14 preceding paragraphs of the Complaint as though set forth fully below.

15 70. NRS 104.2314(1), which reflects § 2-314 of the Uniform Commercial Code, applies
16 to a seller of goods only if the seller is a merchant with respect to goods of that kind.

17 71. All defendants are sellers of goods as defined by NRS 104.2314 in that, upon
18 information and belief, they sell in bulk and on a regular basis hoverboards; all defendants hold
19 themselves out as having knowledge or skill relevant to the practices or goods involved in the sale of
20 hoverboards.
21

22 72. Under NRS 104.2314, goods sold within Nevada carry an implied warranty of
23 merchantability, namely that the goods are fit for the ordinary purposes for which they are used; thus,
24 by operation of law an implied warranty existed.
25

26 73. Mr. Hart's wife and Amazon contracted so that the latter would sell to the former the
27 hoverboard.
28

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1 74. Upon information and belief, Amazon sold the defective hoverboard subject to an
2 implied warranty.

3 75. Amazon breached the implied warranty of merchantability; the hoverboard was not fit
4 for its ordinary purpose of use. Mr. Hart followed the instructions contained within the user manual
5 and attempted to disembark safely off the hoverboard, but a defect in the product caused Mr. Hart to
6 seriously injure himself when stepping off.

7 76. Amazon's standard Conditions of Use, which disclaim implied warranties, violate
8 NRS 104.2316(2), which requires any exclusion or modification of the implied warranty of
9 merchantability to be conspicuous.
10

11 77. The exclusion clause lacks conspicuousness as defined by NRS 104.1201(2)(j)
12 because it is not written in a manner that a reasonable person against whom the exclusion clause is
13 intended to operate against would have noticed it.
14

15 78. The order confirmation form issued by Amazon to Mr. Hart's wife, to whom the
16 hoverboard was shipped, contains a link in small writing at the bottom of the page to Amazon's
17 standard Conditions of Use.
18

19 79. Arguably, neither the link provided nor the disclaimer itself, located halfway down
20 the webpage, are conspicuous. Thus, the exclusion clause fails to satisfy NRS 104.2316(2).

21 80. Nevada law requires contractual privity between a buyer and seller to establish a
22 breach of implied warranty. Even if vertical privity between a manufacturer and buyer is not required,
23 Nevada law still requires horizontal privity.
24

25 81. NRS 104.2318 limits horizontal privity to cover a person in the family or household
26 of the seller's buyer. Even though Mr. Hart's wife purchased the hoverboard with a debit card in her
27 name, the money for the purchase came out of a joint account owned by Mr. and Mrs. Hart.
28

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1 82. Regardless of the above, horizontal privity applies between Mr. Hart and Amazon,
2 and he is therefore entitled to the protection of the implied warranty of merchantability as a third-
3 party beneficiary in accord with NRS 104.2318.

4 83. Notwithstanding the privity requirements, the Uniform Commercial Code requires the
5 buyer of defective goods to give notice of a breach of warranty to the seller as a prerequisite to suing
6 for such a breach, but it appears that no notice requirement is imposed on a plaintiff who is a third-
7 party beneficiary of the warranty, as is Mr. Hart.

8 84. In sum, because all defendants sold the hoverboard—in this instance both DGL and
9 Amazon are both distributors and sellers—both qualify as merchants with respect to hoverboards.
10 Also, upon information and belief, both defendants are merchants subject to an implied warranty of
11 merchantability because they hold themselves out as having pertinent knowledge or skill, either by
12 dint of their businesses or through the employment of others.

13 85. Defendants' conducted their acts and omissions with such wanton and reckless
14 disregard for the well-being of Mr. Hart, and indeed any of the hoverboard's users, so as to constitute
15 malice, gross negligence, and oppression; thus, Mr. Hart is entitled to punitive and exemplary
16 damages in excess of the statutory cap imposed by NRS 42.005(1). NRS 42.005(1)(b) states that the
17 normal punitive damage limits are not applicable to a distributor or seller of a defective product.

18 86. As a proximate result of the negligence of Defendants, Mr. Hart has incurred medical,
19 hospital, and other related expenses; the full extent of these expenses are not currently known, and
20 Mr. Hart shall move for leave to amend the Complaint to conform to proof at the time of trial. Mr.
21 Hart has suffered both general and special damages in an amount in excess of \$15,000.

22 87. As a direct and proximate result of Defendants' conduct, Mr. Hart has suffered special
23 damages, which includes loss of wages, both past, present, and future, in an amount exceeding
24
25
26
27
28

1 \$15,000.

2 88. As a further proximate result of Defendants' negligence, Mr. Hart has suffered general
3 damages including, but not limited to, emotional distress, pain, and suffering as a result of his injuries
4 in an amount that exceeds \$15,000.

5 89. As a further proximate result of Defendants' negligent acts and omissions, Mr. Hart
6 was forced to retain the services of counsel in this action and thus seek reimbursement for an
7 attorney's fee and costs.
8

9 **PRAYER FOR RELIEF**

10 Plaintiff prays for the following relief from Defendants:

- 11 1. For general damages in excess of \$15,000;
- 12 2. For special damages in excess of \$15,000;
- 13 3. For punitive damages in excess of \$15,000;
- 14 4. For Plaintiffs' costs and disbursements of this action;
- 15 5. For a reasonable attorney's fee that Plaintiffs incur;
- 16 6. For any further relief that the Court deems adequate, just, and equitable.

17 DATED this 20th day of July, 2022.

18
19
20 **GERALD I. GILLOCK & ASSOCIATES**

21
22 By: /s/ Alexander J. Smith

23 GERALD I. GILLOCK, ESQ.

24 Nevada Bar No. 51

25 ALEXANDER J. SMITH, ESQ.

26 Nevada Bar No. 15484

27 428 South Fourth Street

28 Las Vegas, NV 89101

Attorneys for Plaintiffs



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ATTORNEYS

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EXHIBIT B

GENERAL DAMAGES

Under Nevada law, Jason is entitled to general damages, including but not limited to: pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, and injury to reputation and humiliation. *See Banks ex rel. Banks v. Sunrise Hosp.*, 120 Nev. 822, 839, 102 P.3d 52, 64 (2004).

As a result, Jason must be compensated for the variety of ways this incident has and will continue to impact his daily life. Jason's daily tasks such as showering, washing himself, getting dressed, grooming, cooking, doing laundry, and cleaning all take additional time and care.

Now, Jason is forced to take significant precautions in life to guard his ankle at all times. As a busy father of three, Jason struggles to keep up with family activities and play time with his children.

Simply put, Jason deserves to be made whole.

ECONOMIC DAMAGES

Similarly, Jason is entitled—as a *matter of law*—to be reimbursed for any economic damages, including past and future medical expenses and lost wages. *Paul v. Imperial Palace, Inc.*, 111 Nev. 1544, 1547, 908 P.2d 226, 228 (1995). Accordingly, please see the following itemization of economic damages that Jason has sustained to date as direct result of DGL's negligence.

| | | |
|-----------|-------------------------------------|-------------|
| Exhibit A | Photographs | N/A |
| Exhibit B | ER at Green Valley Ranch | \$5,053.00 |
| Exhibit C | Shadow Emergency Physicians, PLLC | \$2,841.00 |
| Exhibit D | Desert Radiology Solutions | \$97.00 |
| Exhibit E | Nevada Orthopedic & Spine Center | \$5,377 |
| Exhibit F | Sunrise Hospital and Medical Center | \$42,755.00 |
| Exhibit G | Radiology Specialists | \$31.00 |
| Exhibit H | Mark VandenBosch, M.D. | \$2,730.00 |
| | Future Medical Specials | TBD |
| | Lost Wages | TBD |
| | General Damages | TBD |
| | TOTAL | TBD |



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EXHIBIT C

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CASE NO: A-22-855716-C
Department 4

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Attorneys for Plaintiffs

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

JASON HART,
Plaintiff,
vs.

CASE NO.:
DEPT. NO.:

DGL GROUP LTD., a New Jersey
Corporation; AMAZON.COM SERVICES
LLC, a Delaware Corporation; and ROE
CORPORATIONS I through X, inclusive,
Defendants.

**COMPLAINT FOR STRICT PRODUCTS
LIABILITY, NEGLIGENCE, AND
BREACH OF WARRANTY**

JURY TRIAL DEMANDED

**COMPLAINT FOR STRICT PRODUCTS LIABILITY, NEGLIGENCE, AND
BREACH OF WARRANTY**

Plaintiff, JASON HART (“Mr. Hart”), by and through his attorneys of record, GERALD I. GILLOCK & ASSOCIATES; TIMOTHY O’REILLY, CHTD.; and SAM & ASH, LLP, allege and complain as follows:

PARTIES AND JURISDICTION

1. On July 25, 2020, in Clark County, Nevada, Mr. Hart suffered serious bodily injury due to a defect in a product that upon information and belief was (i) distributed by DGL GROUP LTD. (“DGL”) and (ii) distributed and sold by AMAZON.COM SERVICES LLC (“Amazon”). Over the period encompassed by this action, Mr. Hart resided in Clark County, Nevada, and remains a resident of the same county.

2. Upon information and belief, over the period encompassed by this action, Defendant DGL, a New Jersey corporation, engaged in the distribution and sale of a product known as a “hoverboard.”

3. Upon information and belief, DGL distributed its hoverboards—which were manufactured in the People’s Republic of China—throughout the United States, including via Amazon, who both distributed and sold DGL’s product.

4. Amazon is a foreign corporation that over the period encompassed by this action was, and remains, authorized to conduct business in the State of Nevada.

5. Upon information and belief, for the acts complained of over the period encompassed by this action fictitious Defendants ROES I through X (“Roe Defendants”) are liable for injury incurred by Mr. Hart because of a manufacturing defect inherent in the hoverboard purchased by Mr. Hart from Amazon on July 17, 2020.

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1 6. Over the period encompassed by this action, fictitious Defendants Roe Defendants
2 were corporations, firms, and the like, who were engaged in the business of distributing and selling
3 the defective hoverboard that injured Mr. Hart. The latter is currently unaware of the true names,
4 identities, or capacities, whether individual, corporate, associate, or otherwise of Roe Defendants and
5 is unaware whether any of those entities still conduct business; thus, Plaintiffs sue Roe Defendants
6 by fictitious names.
7

8 7. Mr. Hart is informed and believes and therefore alleges that each Roe Defendant is
9 responsible legally to some degree, both jointly and severally as to strict products liability, for the
10 injury and damage caused by the defective hoverboard. When the identities and capacities of the
11 above become known to Mr. Hart, he will move to amend the Complaint to identify the unnamed Roe
12 Defendants and add specific allegations and claims relevant to each individually accused.
13

14 8. Venue is proper in the Eighth Judicial District Court, which exercises jurisdiction over
15 the parties and the causes of action.
16

17 9. By introducing the hoverboard into the stream of commerce and by supplying them to
18 Amazon and directly to the public, DGL has purposefully availed itself of the privilege of selling its
19 products, specifically its hoverboards, within the State of Nevada; thus, the Nevada courts can
20 exercise jurisdiction over DGL.
21

22 10. Likewise, Amazon, a foreign corporation registered in Nevada and which sells
23 extensively across the entire United States, has distributed, sold, or otherwise placed its products,
24 namely the hoverboard, into the stream of commerce; thus, the Nevada courts can exercise
25 jurisdiction over Amazon.
26

27 11. Amazon's forum selection clause, waiver of right to trial by jury, and requirement to
28 resolve disputes via arbitration are unlawful under general principles of contract law and public

1 policy, as are any clauses that limit liability for personal injury caused by a product that Amazon has
2 sold.

3 **GENERAL ALLEGATIONS**

4 12. On July 17, 2020, Mr. Hart's wife used her own debit card connected to a joint account
5 that she shares with her husband placed an order with Amazon for a new "Hover-1 H1 Hoverboard
6 Electric Scooter." The order was shipped on July 21, 2020, and arrived at the Hart household shortly
7 after.
8

9 13. On July 25, 2020, between the hours of 4:00 p.m. and 5:00 p.m Mr. Hart rode the
10 hoverboard approximately 100 yards from his house, up his street, to where the mailboxes are located
11 communally.
12

13 14. A hoverboard is a motorized personal vehicle consisting of a platform for the feet
14 mounted on two wheels and controlled by the way the rider distributes their weight.

15 15. On the date of the accident, visibility was unlimited. The temperature was 104f, which
16 is within the manufacturer's recommended operating range.
17

18 16. The street down which Mr. Hart traveled was paved. No other vehicular traffic was
19 present and the environment could be described as quiet.

20 17. Without incident, Mr. Hart pulled up in front of the mailboxes, slowed down, and
21 came to a stop.

22 18. On flat ground and in accord with the instructions in the user manual, Mr. Hart lifted
23 his left foot off the hoverboard and placed it on the ground.
24

25 19. While still bearing weight on his right foot, which remained on the hoverboard, the
26 hoverboard without warning rotated violently clockwise.
27

28 ///

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1 20. Mr. Hart's right foot remained stationary on the hoverboard but rotated through
2 approximately ninety degrees, which caused him to fall and land on his elbows and arms.

3 21. Mr. Hart suffered an ankle fracture. Specifically, his injuries included a right ankle
4 fracture of the distal fibula, which necessitated emergency open reduction and internal fixation
5 surgery. Surgeons inserted a steel plate containing screws to secure the bone.
6

7 22. Other injuries included abrasions, difficulty walking, swelling, bruising, sharp
8 shooting pains, burning sensations, and hardware pains.

9 23. In addition to the injuries and symptoms described above, Mr. Hart continues to suffer
10 from pain in his right foot, muscle spasms, dull aches and pains, sharp shooting pains, and he has a
11 limited range of motion.
12

13 24. Mr. Hart now cannot walk long distances. He moved his family to Nevada from St.
14 Louis some three years ago—one of the reasons for the move was so that his family could have more
15 of an outdoor-type lifestyle, and they wished to take advantage of the regional and of Nevada's
16 numerous opportunities for outdoor adventures.
17

18 25. Mr. Hart's daughter especially enjoys outdoor activities, a major reason for the move
19 and change in lifestyle, but due to the injury sustained from the accident, Mr. Hart now struggled with
20 any hiking trips.

21 26. Mr. Hart has purchased two identical hoverboards. He has read the manuals twice and
22 also practiced on the hoverboard within his house so that he could familiarize himself with, and
23 become comfortable using in a safe manner, the hoverboard.
24

25 27. Mr. Hart was proficient in the safe use of the hoverboard; he possesses a video of
26 himself practicing on the hoverboard.

27 28. Mr. Hart followed the instructions within the user manual.
28

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1 29. At the time of the incident, Hart wore closed-toe sneakers, which ensured a good and
2 stable grip on the device. No recommended safety equipment advised in the user manual, namely a
3 helmet and elbow and knee pads, would have prevented or mitigated the harm that Mr. Hart suffered.

4 30. Mr. Hart was not under the influence of any drugs or alcohol at the time he suffered
5 injury.
6

7 31. The hoverboard was never dropped or damaged in any way. In fact, it malfunctioned
8 only days after purchase.

9 32. Mr. Hart has no prior head, back, or neck ailments, and he has had no surgery on those
10 areas. The only surgery he has had was a deviated septum repair years before the incident.

11 33. Before riding, Mr. Hart thoroughly inspected the hoverboard before riding. He
12 checked that the wheels were clean, unobstructed, and free, and he also checked the battery level,
13 which was fully charged.
14

15 34. Mr. Hart never observed any red-light indicator blinking or otherwise, which would
16 have indicated a fault on the hoverboard.
17

18 35. Mr. Hart had no warning at all of any fault.

19 36. At no point did Mr. Hart jump off the hoverboard, which the user manual prohibits.

20 37. Mr. Hart followed all instructions contained within the safety manual regarding
21 disembarkation—an action which he had conducted numerous times before without incident—
22 namely removing his left foot first (backwards) then right foot, but before Mr. Hart had the chance to
23 remove his right foot, the hoverboard malfunctioned due to a manufacturing defect.
24

25 38. The hoverboard was not unbalanced or uncalibrated. Every other time Hart rode the
26 recently purchased item, it functioned fine, just as advertised and as an ordinary user of the product
27 would expect.
28

1 39. Counsel for Mr. Hart placed DGL on notice of the breach of warranty.

2 **FIRST CAUSE OF ACTION**

3 **STRICT PRODUCTS LIABILITY: MANUFACTURING DEFECT**
4 **(AGAINST ALL DEFENDANTS)**

5 40. Mr. Hart adopts and incorporates by reference each allegation contained in the
6 preceding paragraphs of the Complaint as though set forth fully below.

7 41. Each defendant is strictly liable for the manufacturing defect inherent in the
8 hoverboard.
9

10 42. As commercial suppliers who deal routinely in hoverboards, each defendant engaged
11 in the business of selling the hoverboard.

12 43. Also, upon reasonable cause and belief, Amazon marketed, promoted, and collected
13 paymnt for the hoverboard, which DGL distributed and/or sold to Amazon for sale to the general
14 public.
15

16 44. The receipt for order #111-1548091-6031453, placed on July 17, 2020 to Amazon and
17 shipped to Mr. Hart's wife on July 21, 2020 at the marital address, states clearly: "Sold by:
18 Amazon.com Services LLC," and states, "Condition: New."
19

20 45. Each defendant placed upon the market and into the chain of commerce a defective
21 product.

22 46. A defect in the hoverboard, which caused the product to be unreasonably dangerous,
23 caused Mr. Hart's injuries, which would not have occurred absent such a defect.

24 47. The hoverboard was the actual and proximate cause of Mr. Hart's injuries. The defect
25 existed when the hoverboard left the control of Defendants, and upon information and belief, the
26 hoverboard was not substantially altered between leaving the custody of Defendants and delivery to
27 Mr. Hart's household.
28

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1 48. The hoverboard was defective because it failed to perform in the manner reasonably
2 expected in light of its nature and intended function and was more dangerous than would be
3 contemplated by an ordinary user having the ordinary knowledge available in the community; Mr.
4 Hart trained himself in the safe use of the hoverboard and followed the instructions in the user manual
5 for safe disembarkation.

6
7 49. An ordinary and reasonable user would not expect a product of this nature to
8 malfunction and cause such injury only days after delivery. Mr. Hart's injuries speak for themselves;
9 the hoverboard failed to perform in the manner reasonably expected in light of its nature and intended
10 function. Mr. Hart used the hoverboard in an entirely foreseeable manner.

11
12 50. Whilst it is necessary for Mr. Hart to show that a product was defective and that the
13 defect caused the injury, Nevada law does not require Mr. Hart is to show that a *specific* defect caused
14 the injury or to present expert testimony of a manufacturing defect. Mr. Hart presents proof of an
15 unexpected and dangerous malfunction, which the law accepts might properly be accepted by a jury
16 as sufficient circumstantial proof of a defect or an unreasonably dangerous condition without direct
17 proof of the mechanical cause of the hoverboard's malfunction: no direct proof of defect is required.

18
19 51. Defendants' conducted their acts and omissions with such wanton and reckless
20 disregard for the well-being of Mr. Hart, and indeed any of the hoverboard's users, so as to constitute
21 malice, gross negligence, and oppression; thus, Mr. Hart is entitled to punitive and exemplary
22 damages in excess of the statutory cap imposed by NRS 42.005(1). NRS 42.005(1)(b) states that the
23 normal punitive damage limits are not applicable to a distributor or seller of a defective product.

24
25 52. As a proximate result of the negligence of Defendants, Mr. Hart has incurred medical,
26 hospital, and other related expenses; the full extent of these expenses are not currently known, and
27 Mr. Hart shall move for leave to amend the Complaint to conform to proof at the time of trial. Mr.
28

1 Hart has suffered both general and special damages in an amount in excess of \$15,000.

2 53. As a direct and proximate result of Defendants' conduct, Mr. Hart has suffered special
3 damages, which includes loss of wages, both past, present, and future, in an amount exceeding
4 \$15,000.

5 54. As a further proximate result of Defendants' negligence, Mr. Hart has suffered general
6 damages including, but not limited to, emotional distress, pain, and suffering as a result of his injuries
7 in an amount that exceeds \$15,000.

8 55. As a further proximate result of Defendants' negligent acts and omissions, Mr. Hart
9 was forced to retain the services of counsel in this action and thus seek reimbursement for an
10 attorney's fee and costs.
11

12 **SECOND CAUSE OF ACTION**

13 **NEGLIGENCE: DEFECTIVE PRODUCTS**
14 **(AGAINST ALL DEFENDANTS)**

15 56. Mr. Hart adopts and incorporates by reference each allegation contained in the
16 preceding paragraphs of the Complaint as though set forth fully below.
17

18 57. As commercial suppliers that placed hoverboards into the stream of commerce,
19 Defendants owed a duty of care to all foreseeable users of the hoverboard to ensure that the
20 hoverboard would function as expected and not cause dangerous injury towards a foreseeable user.
21

22 58. Defendants breached their duty of care to Mr. Hart, a purchaser and foreseeable user
23 of the hoverboard, in that the former's negligence led to the supply of a defective product as outlined
24 in the preceding paragraphs.

25 59. A retailer and a wholesaler satisfies the duty of care by a cursory inspection of the
26 product.
27

28 60. Upon information and belief, as bulk distributors of the hoverboard, a popular product,

1 Defendants failed to conduct a cursory inspection of the hoverboard to check for defects.

2 61. A res ipsa inference of negligence is permitted because Mr. Hart demonstrates that
3 Defendants were in exclusive control of the hoverboard, the accident was one that does not ordinarily
4 occur in the absence of negligence, and Defendants are in a better position to explain the cause of the
5 accident and the hoverboard's malfunction and defect.

6
7 62. It is more probable than not that Mr. Hart's injuries resulted from Defendants' breach
8 of the duty of care, thus an inference of negligence on the part of Defendants arises.

9 63. As outlined in Count I, Mr. Hart demonstrates actual and proximate cause; he suffered
10 serious injury whilst using the hoverboard in the manner instructed by the user manual, and the injury
11 was the natural and probable consequence of Defendants' negligence, i.e., failure to conduct a cursory
12 examination of the hoverboard, which Defendants ought to have foreseen in light of the attending
13 circumstances.

14
15 64. Defendants' conducted their acts and omissions with such wanton and reckless
16 disregard for the well-being of Mr. Hart, and indeed any of the hoverboard's users, so as to constitute
17 malice, gross negligence, and oppression; thus, Mr. Hart is entitled to punitive and exemplary
18 damages in excess of the statutory cap imposed by NRS 42.005(1). NRS 42.005(1)(b) exempts a
19 distributor or seller of a defective product from the caps imposed by NRS 42.005(1).

20
21 65. As a proximate result of the negligence of Defendants, Mr. Hart has incurred medical,
22 hospital, and other related expenses; the full extent of these expenses are not currently known, and
23 Mr. Hart shall move for leave to amend the Complaint to conform to proof at the time of trial. Mr.
24 Hart has suffered both general and special damages in an amount in excess of \$15,000.

25
26 66. As a direct and proximate result of Defendants' conduct, Mr. Hart has suffered special
27 damages, which includes loss of wages, both past, present, and future, in an amount exceeding
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3 damages including, but not limited to, emotional distress, pain, and suffering as a result of his injuries
4 in an amount that exceeds \$15,000.

5 68. As a further proximate result of Defendants' negligent acts and omissions, Mr. Hart
6 was forced to retain the services of counsel in this action and thus seek reimbursement for an
7 attorney's fee and costs.
8

9 **THIRD CAUSE OF ACTION**

10 **NRS 104.2314: BREACH OF WARRANTY—IMPLIED WARRANTY OF**
11 **MERCHANTABILITY**
12 **(AGAINST ALL DEFENDANTS)**

13 69. Mr. Hart adopts and incorporates by reference each allegation contained in the
14 preceding paragraphs of the Complaint as though set forth fully below.

15 70. NRS 104.2314(1), which reflects § 2-314 of the Uniform Commercial Code, applies
16 to a seller of goods only if the seller is a merchant with respect to goods of that kind.
17

18 71. All defendants are sellers of goods as defined by NRS 104.2314 in that, upon
19 information and belief, they sell in bulk and on a regular basis hoverboards; all defendants hold
20 themselves out as having knowledge or skill relevant to the practices or goods involved in the sale of
21 hoverboards.

22 72. Under NRS 104.2314, goods sold within Nevada carry an implied warranty of
23 merchantability, namely that the goods are fit for the ordinary purposes for which they are used; thus,
24 by operation of law an implied warranty existed.
25

26 73. Mr. Hart's wife and Amazon contracted so that the latter would sell to the former the
27 hoverboard.
28

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1 74. Upon information and belief, Amazon sold the defective hoverboard subject to an
2 implied warranty.

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8 76. Amazon's standard Conditions of Use, which disclaim implied warranties, violate
9 NRS 104.2316(2), which requires any exclusion or modification of the implied warranty of
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12 77. The exclusion clause lacks conspicuousness as defined by NRS 104.1201(2)(j)
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15 78. The order confirmation form issued by Amazon to Mr. Hart's wife, to whom the
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17 standard Conditions of Use.
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19 79. Arguably, neither the link provided nor the disclaimer itself, located halfway down
20 the webpage, are conspicuous. Thus, the exclusion clause fails to satisfy NRS 104.2316(2).
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22 80. Nevada law requires contractual privity between a buyer and seller to establish a
23 breach of implied warranty. Even if vertical privity between a manufacturer and buyer is not required,
24 Nevada law still requires horizontal privity.

25 81. NRS 104.2318 limits horizontal privity to cover a person in the family or household
26 of the seller's buyer. Even though Mr. Hart's wife purchased the hoverboard with a debit card in her
27 name, the money for the purchase came out of a joint account owned by Mr. and Mrs. Hart.
28

1 82. Regardless of the above, horizontal privity applies between Mr. Hart and Amazon,
2 and he is therefore entitled to the protection of the implied warranty of merchantability as a third-
3 party beneficiary in accord with NRS 104.2318.

4 83. Notwithstanding the privity requirements, the Uniform Commercial Code requires the
5 buyer of defective goods to give notice of a breach of warranty to the seller as a prerequisite to suing
6 for such a breach, but it appears that no notice requirement is imposed on a plaintiff who is a third-
7 party beneficiary of the warranty, as is Mr. Hart.

8 84. In sum, because all defendants sold the hoverboard—in this instance both DGL and
9 Amazon are both distributors and sellers—both qualify as merchants with respect to hoverboards.
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5 89. As a further proximate result of Defendants' negligent acts and omissions, Mr. Hart
6 was forced to retain the services of counsel in this action and thus seek reimbursement for an
7 attorney's fee and costs.
8

9 **PRAYER FOR RELIEF**

10 Plaintiff prays for the following relief from Defendants:

- 11 1. For general damages in excess of \$15,000;
- 12 2. For special damages in excess of \$15,000;
- 13 3. For punitive damages in excess of \$15,000;
- 14 4. For Plaintiffs' costs and disbursements of this action;
- 15 5. For a reasonable attorney's fee that Plaintiffs incur;
- 16 6. For any further relief that the Court deems adequate, just, and equitable.

17 DATED this 20th day of July, 2022.

18 **GERALD I. GILLOCK & ASSOCIATES**

19 By: /s/ Alexander J. Smith

20 GERALD I. GILLOCK, ESQ.

21 Nevada Bar No. 51

22 ALEXANDER J. SMITH, ESQ.

23 Nevada Bar No. 15484

24 428 South Fourth Street

25 Las Vegas, NV 89101

26 *Attorneys for Plaintiffs*

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Steven D. Grierson
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CASE NO: A-22-855716-C
Department 4

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18 *Attorneys for Plaintiff*

19 **EIGHTH JUDICIAL DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21
22 JASON HART,
23 vs. Plaintiff,

CASE NO.:

DEPT. NO.:

24 DGL GROUP LTD., a New Jersey
25 Corporation; AMAZON.COM SERVICES
26 LLC, a Delaware Corporation; and ROE
CORPORATIONS I through X, inclusive,

27 Defendants.
28

INITIAL APPEARANCE
FEE DISCLOSURE

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for the
Plaintiffs appearing in the above-entitled action, as indicated below:

JASON HART \$ 270.00

TOTAL REMITTED: \$ 270.00

DATED this 20th day of July, 2022.

GERALD I. GILLOCK & ASSOCIATES

By: /s/ Alexander J. Smith

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Attorneys for Plaintiff

DISTRICT COURT, CLARK COUNTY, NEVADA

| | |
|---|---|
| Plaintiff / Petitioner: JASON HART | Case No: A-22-855716-C Department 4 |
| Defendant / Respondent: DGL GROUP LTD., a New Jersey Corporation; AMAZON.COM SERVICES LLC, a Delaware Corporation; and ROE CORPORATIONS I through X, inclusive, | AFFIDAVIT/DECLARATION OF SERVICE AMAZON.COM SERVICES LLC |

I, Michelle Harris, R-2019-09792, being duly sworn, or under penalty of perjury, state that at all times ///

///

///

relevant, I was over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents.

That on Wed, Aug 03 2022 at 10:36 AM, at the address of 112 N CURRY ST, within CARSON CITY, NV, the undersigned duly served the following document(s): SUMMONS; COMPLAINT FOR STRICT PRODUCTS LIABILITY, NEGLIGENCE, AND BREACH OF WARRANTY in the above entitled action upon AMAZON.COM SERVICES LLC, by then and there, personally delivering 1 true and correct copy(ies) of the above documents into the hands of and leaving same with CORPORATION SERVICE COMPANY, REGISTERED AGENT by leaving with KRIS OSBORNE, PER NEVADA REVISED STATUTE 14.020 2. as a person of suitable age and discretion at the address above, which address is the most recent street address of the registered agent shown on the information filed with the Secretary of State pursuant to chapter 77 of NRS.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. No Notary is Required per NRS 53.045.

Date: 08/05/2022



Michelle Harris, R-2019-09792

ACE Executive Services, LLC (NV #2021C)
8275 S EASTERN AVE STE 200
LAS VEGAS, NV 89123
702-919-7223
Job: 7437054 (Hart Case)